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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. A 969

JOHN E. KALIN, Appellant

v

AEROSPACE CORPORATION, a corporation, N. E. YOUNGBLOOD, GEORGE M. GOFFIN, CROWLEY & GOFFIN, a law firm, JEREMY H. EVANS, THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, and THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, Appellees.

ON APPEAL FROM THE NINTH CIRCUIT COURT OF APPEALS

JURISDICTIONAL STATEMENT

John E. Kalin
32735 Sea Gate Drive
Palos Verdes Peninsula,
California 90274

June 21, 1982

Appellant Pro Se

QUESTIONS PRESENTED

Introduction: The District Court stated that the motions to dismiss appellant's complaint were granted "based on all the grounds" cited in the respective motions to dismiss. Many of the so-called grounds cited were obviously legally impossible, improper, or illogical. As such, appellant had to appeal. In the appeal to the Ninth Circuit court, many of the above mentioned so-called grounds disappeared from the briefs of appellees and new ones appeared. The Ninth Circuit Court did not address itself to this legal situation, and instead restricted its opinion to the three concepts of res judicata, no allegation of conspiracy, and judicial immunity. As such then, appellees used the Ninth Circuit Court as a federal trial court, while putting the burden upon appellant to cope with the time

limits inherent in the Ninth Circuit Court. As such, and within this framework, the following questions are presented:

1. Does the judicial concept of res judicata bar a 42 USC section 1983 and 1985 action?

2. Can an involuntary dismissal in a state court for refusal to furnish improperly ordered security for costs be considered a defense of res judicata when the state law applicable clearly cites the dismissal as being not on its merits and hence is not res judicata?

3. In a pro se complaint, can the Ninth Circuit Court of Appeals make the determination that the underlying claims have "been previously litigated" when said complaint names judicial defendants in a 42 USC section 1983 action?

4. In a pro se complaint wherein relief from judicial defendants is limited to injunctive and declaratory relief, can the concept of judicial immunity bar all relief in a 42 USC section 1983 action?

5. Is a defectively written pro se complaint involuntarily dismissed res judicata to a properly written complaint timely filed?

6. May federal claims which only originated in the state courts and not litigated therein as they appeared be litigated in an action under 42 USC section 1983?

7. Can res judicata be permitted to preclude or foreclose a party from having an actual opportunity to be heard in a 42 USC section 1983 action?

8. Is res judicata a bar to a 42 USC section 1983 action which is based upon facts not in existence at the time of earlier litigation in state courts?

9. Is res judicata a bar when previous state court proceedings did not reach the merits?

10. What constitutes invidious behavior for pleading conspiracy in a 42 USC section 1983 action?

11. Can private parties who conspire with immuned public officials be sued under section 1983 of USC 42?

12. Any other denial of federal rights whether or not capable in itself of being brought here by appeal.

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ON APPEAL FROM THE NINTH CIRCUIT COURT OF APPEALS

JURISDICTIONAL STATEMENT

John E. Kalin, the appellant, appeals from the final judgment of the Ninth Circuit United States Court of Appeal, dated January 25, 1982, holding, as applied in this case, that appellant's claims under 42 USC, sections 1983 and 1985, against Aerospace Corporation and appellant's three ex-attorneys are barred by res judicata when appellant refused to pay security costs as violative of his constitutional rights to file a complaint in equity for relief of judgment and when appellant was unable to attend court due to illness and the court declared in violation of appellant's constitutional rights that he had "abandoned" his case; that appellant's claims against Aerospace Corporation and his three ex-attorneys for conspiracy lack substance; and that appellant's claims seeking only injunctive relief against the judicial defendants were properly dismissed on the grounds of judicial immunity.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, which is reprinted in the appendix attached hereto, page 1a.

JURISDICTION

The judgment of the Ninth Circuit United States Court of Appeals, permanently preventing appellant from pursuing his claims under 42 USC, sections 1983 and 1985, against Aerospace Corporation and his three ex-attorneys was entered on January 25, 1982. See appendix attached hereto, page. 1a.

A motion for rehearing was entered and denied on March 1, 1982. See appendix attached hereto, page. 2a.

Judgment of the Court of Appeals for the Ninth Circuit was filed in the United States Court of Appeals for the Ninth Circuit on April 19, 1982. See appendix attached hereto, page 4a.

This appeal is being docketed in this Court within the time extended by its order dated May 17, 1982.

* Original pages 4, 5, 6, & 7 contained the QUESTIONS PRESENTED and have been relocated to the front part of this Jurisdictional Statement.

CONSTITUTIONAL PROVISIONS & RULES

42 USC section 1983:

....every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state..... or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.... The purpose of this... has been said to be to provide a civil action to protect persons against misuse of power possessed by virtue of state law and made possible because the defendant was clothed with the authority of the state....

42 USC section 1985:

....the right to be free from a conspiracy "for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to

deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws."

Thirteenth and Fourteenth Amendments to the United States Constitution:

the due process and equal protection clauses.

First Amendment to the United States Constitution:

the freedom of communications clause, and the freedom of association clause.

Fourth Amendment to the United States Constitution:

the right of privacy clause.

The Universal Right To Represent Oneself In The Protection of One's Property.

Those Rights Which Need No Judicial Declaration As Rights Because Violations Are Such Gross Abuses To The Human Dignity That They Are Basically Shocking To The Conscience.

STATEMENT OF THE CASE

In November 1961, appellant resigned as the manager of Staff Development for the newly organized Aerospace Corporation of El Segundo, California, which was formed as a private organization to provide management services to the U.S. Air Force. They were charged by the U.S. Air Force with the ability to hire and retain professional employees. Through its personnel manager and personnel director, Aerospace Corporation falsified appellant's resignation papers to make it appear that appellant was terminated for cause and thereby eliminating any negative impact upon their basic charter from the U.S. Air Force.[1] Appellant first learned of this from a Management Consultant in Washinton D.C. 5 years later when he was closing his own management consulting firm and making application for employment with various private firms.

Appellant confirmed the falsification

1./ Aerospace Corporation was investigated

through a private investigator, contacted

1./ by the U.S. Congress in 1965 wherein the report issued by the U.S. Congress stated that: "Management and personnel practices and policies at Aerospace were often unjustifiable and were accompanied by a serious lack of adequate fiscal controls." Also, Aerospace Corporation has had age discrimination lawsuits which they had to settle out of federal court, sex discrimination litigation, and various lawsuits for libel and slander. It has been necessary for appellant to remove his telephone number from court documents to minimize solicitations for assistance from employees.

The Personnel Director herein left shortly after appellant filed his original lawsuit under circumstances that looked like he was fired. Appellant has been informed that the Personnel Manager herein during the time that Aerospace's engineers were unionizing, would when dealing with the union president state that he was in effect in sympathy with the union while delivering documents from the company which opposed such unionization.

Also, Aerospace has been involved in illegal political contributions which information appellee Superior Court refused to permit appellant to use.

See: "The Aerospace Corporation, A Study of Fiscal and Management Policy and Control, Report of the Subcommittee for Special Services of the Committee on Armed Services, U.S. House of Representatives, Eighty- Ninth Congress, First Session, August 12, 1965.

the Vice President of Aerospace Corporation to protest, and hired an attorney to file a complaint.

The first attorney proved incompetent only writing a defective First Amended Complaint in 15 months and threatened appellant with professional negligence if he wasn't released from his contract. The second attorney detected the negligence of the first attorney, conducted some discovery wherein Aerospace Corporation learned that appellant had taped the conversations with the Vice President, and only contacted one company named in the complaint out of 15 or so. When Aerospace Corporation requested settlement negotiations, the second attorney attempted to enlarge his part of the contract. Appellant resisted and the second attorney abandoned the appellant. Being forced to hire a third attorney who proceeded to make legal representations that he couldn't meet, appel- found that he was actually writing discovery

documents. Appellant then found himself in court without effective legal representation from his attorney who rendered his earlier legal represenations to failures and nullities and his case dismissed "for lack of proof". Appellee YOUNGBLOOD, the third attorney, has a reputation that is negative with the local state bar, and has been derogated for his questionable lack of integrity by the Appeals Court of the State of California. See Witkin, California Procedure, 2nd Ed., Vol. 3., p 2640. The third attorney failed to appear when the trial court signed the so-called Findings of Fact and Conclusions of Law - said documents which were simply untrue. Appellant then had to force said attorney to file a motion for a new trial by threats of malpractice, which again proved his legal representations unreliable. Then said attorney abandoned appellant and refused to file an appeal claiming that the judge was wrong.

On March 2, 1970, appellant, representing himself, filed in appellee Superior Court a complaint for attorney malpractice against his three former attorneys. On November 3, 1971, representing himself in part, appellant filed in appellee Superior Court a complaint for relief from judgment, invasion of privacy, and for conspiracy against defendants in the underlying litigation and appellant's three ex-attorneys

In the attorney malpractice case, above-mentioned, appellant was subjected to those acts described in the complaint starting on page 5 and continuing to page 10. See certified record filed. During pre-trial motions, it was obvious that complaints from appellant only risked further inflictions of harassment and the kind of activity described in the complaint. The trial court's behavior described in detail culminated in the involuntary dismissal of the case when appellant was ill and had notified the court, to which the court "sent word" that appellant would have

appear the next morning with his doctor in tow - which was impossible under the circumstances. The trial court's posture was anti-climaxed when the trial judge stated:

> "And the court is well aware of the feelings of the courts of this state as to pro pers".

Appellee, the Court of Appeal of the State of California, refused to take any notice of the behavior of the trial court - or of its demonstrated prejudicial utterances, and only compounded appellant's case by writing an opinion filled with multiple factual errors which they refused to correct and which reflected an inability for three juddges to have made the same errors. Appellee Court of Appeal even placed appellant's wife in the case to support the trial court when appellant's wife had no part or burdens in appellant's case.

In the case of plaintiff representing himself to vacate the judgment in the underlying litigation against appellee Aerospace Corporation, appellant was subjected to those

acts described in the complaint starting on page 10 and continuing on to page 15, See certified record filed. With both cases going on concurrently, appellant was initially confronted with a violent and raw shouting in open court by the judge as follows:

> "How dare you bring such a large suit against a major corporation and represent yourself without an attorney?"

As if that were not a sufficent attack upon appellant, the same judge "insisted" that appellant's allegations of conspiracy mandated that all three of appellant's ex-attorneys had to know of one another and had to have conspired with one another prior to the time that even the appellant contacted each attorney successively or even knew of their existence. With such judicial propriety and rationality, two of appellant's ex-attorneys filed motions to have appellant declared a vexatious litigant and to pay security pur-

suant to California Code of Civil Procedure section 391 (b) (2), wherein said attorneys by their relationship to the appellant had no basis to make the motion. Appellee Aerospace Corporation joined in and made the same motion which the court described immediately above granted. Appellant then ran for an umbrella and had an attorney write and file his complaint after he voluntarily dismissed the action resulting in the above described attack. With or without an attorney, appellant's position had not changed as described in the complaint and as indicated starting on page 12. Appellant refused to pay such fees or accept such a designation. His complaint was dismissed. In appellee Court of Appeal, appellant was greeted with Presiding Judge Parker Wood, who did not take part in the hearing, stating in a shouting voice that appellant's case "was not important" thereby informing Aerospace's attorney that he could catch the afternoon plane for San Diego. Appellee Court of Appeal's written

opinion was filled with so many factual errors that they even referred constantly to appellant as the defendant when he was the plaintiff. Appellee Court of Appeal's opinion now forever preludes his right to use the state court's representing himself without being subjected to the payment of security costs by anyone. Even appellee Aerospace Corporation had to call the court's attention to its errors which resulted in compounded errors. Appellee Court of Appeal refused to make the corrections indicated by appellant herein - many of which were simply factual.

On March 12, 1979, appellant filed in the United States District Court for the Central District of California a complaint based on 42 USC, section 1983, 1985, See certified record filed. Motions to dismiss in several hearings by appellees were granted. The motions to dismissed contained eleven different grounds - some of which were not legally proper or relevant. Appellant inquir-

ed of the court the basis for granting the motions. The court replied: "On all of the grounds cited in the motions." See Certified Record filed. On July 20, 1979, a NOTICE OF APPEAL was filed. Appeal was had at which time many of the grounds cited in their respective motions for dismissal in the district court were not brought to the Ninth Circuit. The Ninth Circuit Court of Appeal, from which this appeal is taken, filed on January 25, 1982, its memorandum opinion affirming the district court's dismissal of all of appellant's claims. On February 2, 1982, appellant filed a motion for rehearing, which was denied.

THE QUESTIONS ARE SUBSTANTIAL

The questions are substantial as they cut across and are inter-dependent upon 42 USC sections 1983 and 1985; the due process and equal protection clauses of the Thirteenth and Fourteenth Amendements; the freedom of communications and freedom of association clauses of the First Amendment; and the right to privacy clauses of the Fourth Amendement.

The many individual questions raised in this appeal coalesce into a basic and fundamental question affecting the vast majority of citizens of this country and particularly the citizens of the State of California. And that question is whether individual property rights can be protected by the individual representing himself in a judicial system which not only demonstrates repeatedly, but openly shouts, that the entire state judiciary will not provide the fundamental and federally founded rights provided by the constitution and the United States Congress.

This is a complex case where the main issues and the original actors are now appreciably removed. It is made all the more complex since the opinions stated by the district court and the Ninth Circuit Court are indeed at variance and lack the evolutionary development that lends to easy comprehension. This condition underscores for emphasis the coalesced question stated above.

The Ninth Circuit has addressed itself to the concepts of res judicata, conspiracy pleading, and judicial immunity and uses these three concepts to reaffirm the district court's order of dismissal based on many more and highly questionnable concepts.

According to Professor Chester J. Antieau, in his book entitled: "Federal Civil Rights Acts, Civil Practice", this Court has not yet ruled upon the question whether res judicata applies in section 1983 actions. He further states that in view of the clear unwillingness of the

Congress responsible for the Act to trust with any finality the state court's rulings on federally protected rights, it is likely that, as in habeas corpus actions in the federal courts, res judicata will not be "wholly applicable". Citing Preiser v Rodriques (1973) 411 US 475, 36 L Ed 2d 439, 93 S Ct. 1827.

The Ninth Circuit in its opinion states that appellant's underlying claims against appellee Aerospace Corporation and his claims against his three attorneys "have been litigated previously" and are barred by res judicata, citing Scoggin v Schrunk, 522 F.2d 436 (9th Cir. 1975), cert denied 423 U.S. 1066, 96 S. Ct 807 (1976), which holds that res judicata bars the federal constitutional claim whether it was asserted in the state courts or not. Inherent in this concept, of course, is the implied concept of merit - although it is grossly apparent that the mandatory concept of merit cannot be determined or verified. Immediately,

it is grossly obvious that, as applied, no constitutional claims involving the state judicial systems would ever reach the federal level. And yet, the most superficial history of the Civil Rights Act of 1879, indicates that it was the state judicial systems that MANDATED enactment of the civil rights act.

As res judicata is applied to appellee Aerospace Corporation wherein appellant refused to pay the security costs and his case was dismissed as a result of said refusal to pay, it is elementary California law that dismissal for failure to furnish security for costs is not on its merits and hence not res judicata. See California Procedures, 2nd Ed., Witkin, Vol 4., page 3319, citing Ensher v Ensher, etc., (1960) 187 C.A. 2d 407, 411, 9C.R. 732 (derivative suit under Corp. Code 834). Further Professor Witkin in California Procedures, supra, Vol. 2., page 1062, states the previous reprimand of appellee Superior Court wherein he quotes:

"An insistence on evidentiary support for the determination, and a warning against casual fixing of unnecessarily large amounts as security, appear in Muller v Tanner, supra, 2 C.A.3d 466: 'This saga demonstrates that if the vexed movant and vexed court fail to give scrupulous regard TO THE RIGHTS of the vexatious litigant under statutory provisions, that law will serve, not to reduce, but to proliferate further vexatious litigation such as markrs the history of this case.'" (Emphasis added.)

At this early juncture, it should be noted that Professor Witkin describes the failure of appellee Superior Court as a failure in granting the civil rights of litigants that appellee Superior Court finds "inconvenient", and which will be related below to the Ninth Circuit Court's concept of conspiracy pleading.

As res judicata is applied to appellant's three ex-attorneys, appellant's complaint clearly indicates that appellant became ill,

notified the court, and was told that he would have to appear the next morning with his doctor in tow - said communication given to a third party. And this in a court where the judge fully demonstrates his hostility by stating:

> "And the court is well aware of the feelings of the courts of this state as to pro pers."

The court's attempts to insist that appellant had abandoned his case does not conform to the most elementary defintion of the word abandonment which is in itself negated by this appeal to this court.

As is so clearly obvious, Scoggin would permit the state courts to hide their violations of federally granted and constitutional rights. The Ninth Circuit in Ney v California-- (1971, CA9 Cal) 439 F2d 1285, 1288, stated the obvious when it stated that res judicata could render the Civil Rights Act into a dead letter concept.

There were no constitutional questions in appellant's underlying litigation. One

action was to vacate the judgment and the other was for attorney malpractice. The constitutional questions in appellant's complaint arose during the proceedings in the underlying litigation. If appellant representing himself had to keep a moment by moment check on the conduct of the state courts to determine if his federal and constitutional rights were being violated, he would never be able to prosecute the cases he had. Is it not apparent that the members of the legal community, including the courts, knew exactly what they were doing and what was happening? These then are the same circumstances that brought the Civil Rights Act into existence in the first instance. Appellant with no training in law did not even distinguish between contract and tort when he first started. Can there be any doubt that he was viewed as an "easy target"?

Therefore:

- Res judicata is never a barrier to a section 1983 action which is based even in

part upon facts that were not in existence at the time of the earlier litigation in either federal or state courts. Black Voters v McDonough (1976, DC Mass) 421 F Supp 165, affd (CA 1 Mass) 565 F2d 1.

- Res judicata is never a defense in a section 1983 action when previous state court proceedings did not reach the merits. De Luca v Sullivan (1977, DC Mass) 450 F Supp 736. The Court of Appeals for the Second Circuit suggests that res judicata should not be applied to procedural due process questions in section 1983 actions, particularly where the effect would be to deny plaintiffs any hearing on the issues in any court. Lombard v Board of Education (1974 CA 2 NY) 502 F2d 631, cert den 420 US 976, 95 S Ct 1400 and on remand (ED NY) 400 F Supp 1361 and on remand (ED NY) 407 F Supp 1166 and on remand (ED NY) 440 F Supp 577; and Neeld v National Hockey League (1977, WD NY) 439 F Supp 446, 450. See also, Ney v California, supra.

- Federal claims not raised and determined in the state courts may be litigated in an action under section 1983, even if the issues could have been litigated in the state forum. Williams v Codd (1978, SD NY) 459 F Supp 804, 813-814.

Regarding conspiracy pleading, Professor Chester J. Antieau, in his book entitled above, states:

"Plaintiffs in actions under 42 USC, section 1985(3) must plead and prove (1) the existence of a conspiracy, (2) intended to deny the plaintiff 'equal protection of the laws or of equal privileges and immunities under the laws,' and (3) injury or deprivation of right to the plaintiff. Additionally, courts generally require allegation and proof of (4) an overt act in furtherance of the conspiracy, and (5) an intentional or purposeful discrimination." Citations omitted.

Professor Antieau continues by stating that

"However, it is not required that a plaintiff in a section 1985 action 'plead his evidence'"., citing Hoffman v. Halden (1959, CA9 Or) 268 F2d 280, later proceedings Hoffman v Wair (DC) 193 F Supp 727.

The Ninth Circuit's opinion simply states: "Appellant 'simply did not allege any facts showing the deprivation of any

constitutional or other legal rights.'" citing Aldabe v Aldabe, 616 F.2d 1089 (9th Cir. 1980). It is more than noteworthy that none of the appellees cited Aldabe supra, in connection with conspiracy pleadings. Only appellee Superior Court cited it in connection with the concept of judicial immunity wherein the appellant in Aldabe maintained that judicial immunity has been superceded by the Civil Rights Act which was not urged in appellant's appeal herein.

The Ninth Circuit simply ignored the acts described in appellant's complaint. They have also ignored the meaning of the words "invidiously discrimnatory animus" used in the case cited. Further, the case cited is not similiar to appellant's.

The constitutional right to procedural due process of law is protectable in section 1983 actions. Regents of University of Minn. v. National Collegiate Athletic Asso. (1977, CA8 Minn) 560 F2d 353.

The federal conspiracy statute and this Court have demanded that to establish a conspiracy, proof that two or more persons agreed to commit a crime and that one of them committed a single "overt act" toward that end. With a conspiracy the essential ingredient is the agreement, which need not be on paper or even expressed aloud. "Parallel actions" demonstrating an implied "meeting of the minds" are enough.

Appellant submits that for a pro se complaint, his complaint meets those requirements.

In Justice Holmes' words, a "party's conduct" may "consist in uttering certain words." O.W. Holmes, THE COMMON LAW 132 (1923).

As indicated on page 24, supra, Professor Witkin described the Superior Court's failures and failures in civil rights, and yet the Ninth Circuit attempts to hold that appellant's complaint "simply did not allege any facts showing the depri-

vation of any constitutional or other legal rights". Supporting Professor Witkin - and appellant herein - is the obvious fact that none of the appellees directly involved with underlying litigation and facts attempted to utilize Aldabe supra, to attack the conspiracy pleadings. And certainly none has suggested conclusory allegations. The Ninth Circuit reflects in its opinion its removal from the facts and an understanding therein.

Regarding judicial immunity, while appellant's complaint clearly states that he only seeks injunctive and declaratory relief from judicial defendants, the Ninth Circuit states all embracingly that "the claims were properly dismissed on grounds of judicial immunity", citing Stump v. Sparkman, 435 U.S. 439, 98 S. Ct. 1099 (1978) and Aldabe, supra, at page 1091. During oral argument, appellant argued that absolute judicial immunity was for damages, also citing Stump, supra. Jurisdiction was further defined with the concept that "the court must have authority under the applicable state law to enter the order that was made" citing Duba v. McIntrre (1974 CA8 Neb 501 F2d 590 cert den 424 US 975, 47 L Ed 2d 745, 96 S Ct 1480. Appellant attempted to stress that appellee Superior Court did not have the authority to order security costs from appellant when movants could not meet the requirements to file for such costs. Regardless however, it is well established that injunctive and declar-

atory relief are available in a section 1983 action against judges who interfere with citizen's civil rights. Bramlett v Peterson (1969, DC Fla) 307 F Supp 1311; Phillips v Cole (1968, DC Miss) 298 F Supp 1049; United States v Clark (1965, DC Ala) 249 F Supp 720; Keon v Long (1969, DC Mo) 302 F Supp 1383. Appellee Aerospace Corporation attempted to invoke judicial immunity in an attempt to establish insufficient liability of private persons under color of law and conspiracy. However, the Court of Appeals for the First Circuit has held that private parties who conspire with immuned public officials may be sued under section 1983. Kermit Constr. Corp. v Banco Credito Y Ahorro Ponceno (1976, CA1 Puerto Rico) 547 F2d 1. Although appellant's pro se complaint avoids the entire issue of judicial immunity by not seeking any damages from judicial defendants and not naming them as conspirators, it should possibly be noted that Chester J. Antieau, Professor of Constitutional Law at

Georgetown University Law Center, Washington, D.C., urges that the whole area of judge-created immunities for judges and other under the civil rights acts must be re-examined. In this regard, it has been noted by sufficient legal authorities in this country that there is no convincing proof that the Congress responsible for the Civil Rights ever intended to immunize any state or territorial officials or employees. It is more likely that the Congress intended to do away with what ever common-law immunities existed. Congressional Globe, 42d Cong, 1st Sess., 365-6, 368, 385 (1871), and Liability of Judicial Officers under Section 1983, 79 Yale LJ 322, 328 (1969). In view of the above, judicial immunity extended to private persons, and to those well aware of their actions and the consequences which are in their self interests, becomes all the more indefensible. Whatever public policy reasons might be thought to justify an immunity of certain state officials from damages, there is no sound reason for

creating any immunity from injunctive or declaratory relief. The language of the Civil Rights Act is sufficiently broad to include all state officials. The 1880 case of Ex parte Virginia (Ex parte Virginia (1879 100 US 339) decided by a Supreme Court roughly contemporaneous with the generation responsible for the Civil Rights Acts, held a judge was not immune from criminal sanctions under these Acts and it is safe to conjecture that this Court would have held judges responsible under the civil side. And this Court has ruled that a section 1983 is an expressly authorized statute enabling federal courts to grant injunctions against state judicial and administrative proceedings. Gibson v Berryhill (1973) 411 U.S. 564.

Appellant avoided the concept of judicial immunity in his complaint by seeking only injunctive and declaratory relief. Judicial immunity as applied to appellant is particularly offensive and as such he includes all

the arguments set forth in the well known dissenting opinion in Pierson v. Ray 386 U.S. 547 (1967) and calls particular attention to that section wherein Justice Douglas states that judicial immunity is the corollary to the theory that "The King can do no wrong". In this country we do not have a king, and when certain Presidents thought otherwise they were confronted by this Court which has in the past obliged them "to take Care that the Laws be faithfully executed".

Do we then have a judiciary superior? By analogy it simply cannot be. And history has illustrated the fallibility of kings. Who then can justify subscription to such an outdated reliance?

To paraphrase a well known constitutional scholar, the California Courts perilously resemble the subordination of law to the attainment of ends desired by a ruling power which was the hallmark of Hilterism and Stalinism.

Summary: Judicial appellees in their conduct provide the repudiation of their legitimacy. Appellee Aerospace Corporation in its attempt to hide behind the immunity of the judicial appellees does the same. Res judicata and judicial immunity are - after all - administrative concepts directed not towards the substance but towards the procedural flow of rights. It is well known that a large majority of certain citizens in this country are deprived of legal representation due to economics. The current recession should have enlarged that deprivation. If the California Courts are to be permitted to behave irresponsibly and unchecked, then it appears that citizens' rights will have to be procured by a large number of citizens in the media or elsewhere relying upon a resolute public repudiation of the judicial system. The citizens of this country either have rights that are enforceable - or those rights do not exist. Can we really brush aside justice and right with densly concoted legalistic

verbiage? The "reverential awe-bred-of-ignorance" with which many citizens of this country may have regarded its judicial system is simply a thing of the past. What other perspective is possible with a judge who does not even hesitate to state:

> "And the court is well aware of the feelings of the courts of this state as to pro pers".

and thereby revealing his pre-judgment? The Ninth circuit has held that a judge's private, prior agreement, to decide in favor of one party is not a judicial act. Rankin v Howard, (1980, CA9 Ariz) 633, F2d 844, cert den (US) 68 L Ed 2d 326, 101 SC 2020. What kind of act is it suppose to be for the judge quoted above? The Ninth Circuit attempts to maintain an impossible fiction.

CONCLUSION

For these reasons, this Court should note jurisdiction of this appeal.

Respectfully submitted,

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Appellant Pro Se